IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO. 80 OF 2004

IN

SUMMARY SUIT NO. 3317 OF 2003

Smt.Geeta T. Gada .. Plaintiff

versus

Harshadrai & Brothers & ors. .. Defendants

...

Mr.C.S. Kapadia i/b M/s.Harakchand & Co. for the plaintiff.

Ms.Mridula Bhatia for the defendant.

CORAM : D.G. KARNIK,J.

DATED : 7th February 2005.

P.C.:

1. Heard the learned counsel for the parties.

2. The plaintiff has filed suit for recovery of Rs.1,00,000/- and interest. The suit is based upon a writing (Exhibit-A). The writing (Exhibit-A) is in

the nature of a promissory note. Therefore, there is no presumption of consideration u/s.118 of the Negotiable Instruments Act. The defendants have contested claim of the plaintiff by filing an affidavit in reply in which they have stated that they do not even know the plaintiff and that they have not received any loan from the plaintiff. No independent evidence has been adduced regarding the granting of any loan. The loan amount is Rs.1,00,000/- which is larger than the amount for which cash loan can be made under the provisions of Income Tax Act. Prima facie, it cannot be said that the defence raised by the defendants is illusory. Hence, the defendants are granted unconditional leave to defend the suit.

3. Suit shall stand transferred to the list of commercial causes. The defendants to file written statement within a period of four weeks.

D.G. KARNIK, J